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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,617	05/08/2006	Kazunari Kobayashi	290768US2PCT	3715

22850 7590 12/02/2010  
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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DAVIS, PATRICIA A

ART UNIT	PAPER NUMBER
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1729

NOTIFICATION DATE	DELIVERY MODE
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12/02/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/578,617	<b>Applicant(s)</b> KOBAYASHI ET AL.	
	<b>Examiner</b> PATRICIA DAVIS	<b>Art Unit</b> 1729	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1, 11, 13-15, 18, 19 and 21-23.  
 Claim(s) withdrawn from consideration: 16 and 17.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Ula C Ruddock/  
 Supervisory Patent Examiner, Art Unit 1795

/PATRICIA DAVIS/  
 Examiner, Art Unit 1729

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Hikata does not teach the average grain diameter of a zinc sheet or zinc can active material. However, Hikata et al. (JP07094193) teaches that alloy sample of Table 2 was made using a heat treatment with a heating roller press with a hexagon-head pellet in the same temperature range as Applicant's (see par. 0013). Applicant teaches heat control with a (see pars. 0044-0051 of Applicant's corresponding PGPub) hot rolling with hexagonal pellets to prepare the anode sheet, which is the same as Applicant's. It is inherent that the grain size would be the same if the same process was used in Hikata et al. as Applicant's in regards to the zinc sheet (see par. 0013). Further, from Figs. A and B that were submitted by Applicant it is seen that Fig. A's left edge is the same as Fig. B's edge. Therefore, the can and sheet of Hikata et al. inherently has the same average grain diameter of said zinc sheet or zinc can. Further, since the averaged grain diameter is claimed it is practical to assume that some of Applicant's grain diameters would have larger grain diameters than the average grain ratio given, to find the average ratio of the grain diameters. Applicant argues that Hikata et al. does not teach a "10 cm<sup>2</sup> active material can or sheet." However, Hikata et al. does not disclose a constant temperature water chamber filled with an electrolyte having a concentration of 2.9 ppm nickel, 0.4 ppm cobalt and 0.86 ppm copper for 66 hours at a temperature of 45 degrees when measuring the corrosion resistance. Since corrosion resistance is an intrinsic property of the active material it would be inherent to observe the same corrosion effects of the active material of Hikata et al. (which is processed and the same as Applicant's) to exhibit the same corrosion resistance as stated in the claims. Applicant argues that Hikata et al. only teaches a manufacturing method of an alloy sheet or pellet. However, Hikata et al. teaches that the invention relates to a manganese dry battery used in a negative electrode of the zinc alloy (see par. 0001) and teaches how to form a zinc alloy for the manganese dry battery (see par. 0007). The claim recites that "the active material comprising a zinc sheet or a zinc can for the battery anode being processed in a range of more than 118 degrees Centigrade to less than 230 degrees Centigrade..." The claim recites that the rolling and heat treatment is done only to the active material itself. Therefore, as seen from Hikata et al. which teaches rolling the active material with a heated roller press in the desired temperature range (see par. 0013). Even though pellets are formed from the rolled sheet, they would exhibit the same properties as the heat treated rolled product..